

CLEMENT SETH ROBERTS (STATE BAR NO. 209203)
croberts@orrick.com
BAS DE BLANK (STATE BAR NO. 191487)
basdeblank@orrick.com
ALYSSA CARIDIS (STATE BAR NO. 260103)
acaridis@orrick.com
EVAN D. BREWER (STATE BAR NO. 304411)
ebrewer@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759

SEAN M. SULLIVAN (admitted *pro hac vice*)
sullivan@ls3ip.com
RORY P. SHEA (admitted *pro hac vice*)
shea@ls3ip.com
J. DAN SMITH, III (admitted *pro hac vice*)
smith@ls3ip.com
COLE RICHTER (admitted *pro hac vice*)
richter@ls3ip.com
MICHAEL P. BOYEA (admitted *pro hac vice*)
boyea@ls3ip.com
JAE Y. PAK (admitted *pro hac vice*)
pak@ls3ip.com
LEE SULLIVAN SHEA & SMITH LLP
656 W Randolph St., Floor 5W
Chicago, IL 60661
Telephone: +1 312 754 0002
Facsimile: +1 312 754 0003

Attorneys for Sonos, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff and Counterdefendant,

v.

SONOS, INC.,

Defendant and Counterclaimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**DECLARATION OF COLE B.
RICHTER IN SUPPORT OF
GOOGLE'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED (DKT. 350)**

I, Cole B. Richter, declare as follows and would so testify under oath if called upon to do so:

1. I am an attorney with the law firm of Lee Sullivan Shea & Smith LLP, counsel of record to Sonos, Inc. (“Sonos”) in the above-captioned matter. I am a member in good standing of the Bar of the State of Illinois. I have been admitted *pro hac vice* in this matter. I make this declaration based on my personal knowledge, unless otherwise noted. If called, I can and will testify competently to the matters set forth herein.

2. I make this declaration in support of Google’s Administrative Motion to Consider Whether Another Party’s Material Should be Sealed filed on August 15, 2022 (Dkt. 350) (“Administrative Motion”), in connection with Google’s Brief Showing Cause Why the Court Should Not Enter Summary Judgment *Sua Sponte* of Validity of the ’885 Patent (“Brief Showing Cause”).

3. Sonos seeks an order sealing the materials as listed below:

Document	Portions Google Sought to Be Filed Under Seal	Portions Sonos Seeks to Be Filed Under Seal	Designating Party
Brief Showing Cause	Portions highlighted in blue	Same portions highlighted by Google	Sonos
Exhibit 1 to the Declaration of Marc Kaplan in Support of Google’s Brief Showing Cause	Entire Document	Portions highlighted in yellow on pages 92-96, 151, 152, 161-164, and 183 of the report (not pdf)	Sonos
Exhibit 3 to the Declaration of Marc Kaplan in Support of Google’s Brief Showing Cause	Entire Document	Entire Document	Sonos
Exhibit 6 to the Declaration of Marc Kaplan in Support of Google’s Brief Showing Cause	Entire Document	Portions highlighted in yellow on pages 166, 167, 169, 172, 179-181, 190, 191, 192 (text and image) 193-202, 216-219, 226, 227, and 230-232 of the report (not pdf)	Sonos

Document	Portions Google Sought to Be Filed Under Seal	Portions Sonos Seeks to Be Filed Under Seal	Designating Party
Exhibit 12 to the Declaration of Marc Kaplan in Support of Google's Brief Showing Cause	Entire Document	Image in green box on page 6 and portions highlighted in green on page 37 of the report (not pdf)	Sonos

4. I understand that the Ninth Circuit has recognized two different standards that may apply to a request to seal a document, the “compelling reasons” standard and the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The compelling reasons standard applies to any sealing request made in connection with a motion that is “more than tangentially related to the merits of a case.” *Id.* Accordingly, I understand courts in this district apply a “compelling reasons” standard to a sealing request made in connection with a motion for summary judgment. *See, e.g., Snapkeys, Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250, at *2 (N.D. Cal. May 14, 2021).

5. I further understand that confidential technical information about product features, architecture, and development satisfies the “compelling reason” standard. *See Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (finding compelling reasons to seal where court filings contained “highly sensitive information regarding [an entity’s confidential] product architecture and development”); *Guzik Tech. Enters., Inc. v. W. Digital Corp.*, No. 5:11-CV-03786-PSG, 2013 WL 6199629, at *4 (N.D. Cal. Nov. 27, 2013) (sealing exhibit containing “significant references to and discussion regarding the technical features” of a litigant’s products). Under this “compelling reasons” standard, the Court should order the above-listed documents sealed.

6. The **Brief Showing Cause** references and contains Sonos’s confidential business information and trade secrets, including details regarding the source code, architecture, and technical operation of various products. The specifics of how these functionalities operate is

1 confidential information that Sonos does not share publicly. Thus, public disclosure of such
2 information may lead to competitive harm as Sonos's competitors could use these details
3 regarding the architecture and functionality of these products to gain a competitive advantage in
4 the marketplace with respect to their competing products. A less restrictive alternative than
5 sealing said documents would not be sufficient because the information sought to be sealed is
6 Sonos's confidential business information and trade secrets and Sonos understands that Google
7 contends that this information is necessary to Google's Brief Showing Cause.

8 7. **Exhibits 1, 6 and 12** are expert reports served by the parties and designated as
9 "Highly Confidential – Source Code – Attorneys' Eyes Only" and "Highly Confidential AEO and
10 Source Code Materials" pursuant to the Protective Order in this case. *See* Dkt. 92. Sonos is
11 submitting concurrently herewith, marked versions of Exhibits 1, 6 and 12. The portions
12 highlighted in yellow and the images in yellow boxes, contain Sonos's confidential business
13 information and trade secrets, including details regarding the source code, architecture, and
14 technical operation of various products. The specifics of how these functionalities operate is
15 confidential information that Sonos does not share publicly. Thus, public disclosure of such
16 information may lead to competitive harm as Sonos's competitors could use these details
17 regarding the architecture and functionality of these products to gain a competitive advantage in
18 the marketplace with respect to their competing products. A less restrictive alternative than
19 sealing said documents would not be sufficient because the information sought to be sealed is
20 Sonos's confidential business information and trade secrets and Sonos understands that Google
21 contends that this information is necessary to Google's Brief Showing Cause.

22 8. **Exhibit 3** is the entire deposition transcript of Robert Lambourne, a corporate
23 designee of Sonos. The transcript is designated "Highly Confidential" by the parties pursuant to
24 the Protective Order in this case. *See* Dkt. 92. The transcript contains Sonos's confidential
25 business information and trade secrets, including details regarding the source code, architecture,
26 and technical operation of various products. The specifics of how these functionalities operate is
27 confidential information that Sonos does not share publicly. Thus, public disclosure of such
28

1 information may lead to competitive harm as Sonos's competitors could use these details
2 regarding the architecture and functionality of these products to gain a competitive advantage in
3 the marketplace with respect to their competing products. A less restrictive alternative than
4 sealing said documents would not be sufficient because the information sought to be sealed is
5 Sonos's confidential business information and trade secrets and Sonos understands that Google
6 contends that this information is necessary to Google's Brief Showing Cause.

7 9. Sonos's request is narrowly tailored to protect its confidential information.

8 10. Sonos further advises that it does not seek to seal any portions of **Exhibits 9 and 11**
9 as listed in Google's Administrative Motion.

10 I declare under penalty of perjury that the foregoing is true and correct to the best of my
11 knowledge. Executed this 22nd day of September, 2022 in Chicago, Illinois.

12
13 /s/ Cole B. Richter

14 COLE B. RICHTER
15
16
17
18
19
20
21
22
23
24
25
26
27
28